EMINENT DOMAIN USED TO ACQUIRE GEOLOGICAL SUBSTRATA

Peoples Gas Light & Coke Co. v. Buckles
24 Ill. 2d 520, 182 N.E.2d 169 (1962)

Plaintiff natural gas company wanted to utilize 5,000 acres of a 23,000-acre, dome-like structure in a pilot or test operation for the storage of natural gas. There was no assurance that the project would be successful. The stratum in which the gas was to be stored was the St. Peter Sandstone, a geological formation uniquely suited to gas storage but without other commercial value. The surface of the landowner's property was used for farming and was improved with the usual farm buildings. After obtaining rights to an easement in most of the 5,000 acres, the gas company still could not come to terms with the owners of the 160-acre farm in question.[1] Although they were not storing gas or attempting such an operation, defendants valued the property as if it could be used as a successfully operating gas storage field, even in the absence of public involvement. The company's final offer of $45 per acre was rejected by the landowners. Suit was instituted by the company to condemn the geological stratum under defendants' property and to determine its value. One estimate of the farm's worth as a gas storage field was $413,616, a figure based on predicted future net revenue discounted to a present-day value. This figure was excluded from evidence. Another estimate, also excluded from evidence, was that the present value of the land was $250,000 to $300,000, based on its "highest and best" use as a gas storage field, but it would only be worth from $50,000 to $100,000 after condemnation by the company. There was testimony that similar land in the area was sold during the years 1959, 1960 and 1961 at prices ranging from $500 to $600 per acre and that some of these sales were made after the owners were aware of the gas storage possibilities. The court fixed the value of defendants' land in fee at $500 per acre. A verdict was directed for the company, and damages to the defendants' fee were determined to be $25 per acre, a total recovery of $4,000. The case is one of first impression in this country.[2]

The fifth and fourteenth amendments protect citizens of the states and of the United States from the seizure of private property for public use without just compensation.[3] The states have adopted similar provisions in their constitutions.[4] The constitution of Illinois provides in article II, sec-

[1] The company was acting under the authority of a statute which sanctioned the condemnation and acquisition of property more than 500 feet below the surface for gas storage purposes. It had been granted exclusive condemnation rights by the Illinois Commerce Commission. Ill. Rev. Stat. ch. 104, §§ 104, 105 (1959); Ill. Rev. Stat. ch. 111-2/3, §§ 50, 56 (1959).

[2] Peoples Gas Light & Coke Co. v. Buckles, 24 Ill. 2d 520, 182 N.E.2d 169 (1962).

[3] U.S. Const. amend. V, U.S. Const. amend. XIV, § 1; Chicago, B. & Q. R.R. v. City of Chicago, 166 U.S. 226 (1897).

[4] 18 Am. Jur. *Eminent Domain* § 128 (1938).

tion 13 that: "Private property shall not be taken or damaged for public use without just compensation." An Illinois statute contains a similar provision.[5] Even in the absence of a constitutional provision, the right of eminent domain is inherent in all sovereign states[6] and, by analogy, in the several states of the Union.[7] Difficulty arises when the meaning of "just compensation" must be applied to the concrete facts of a particular case. Just compensation is generally held to be the market value of the land, *i.e.*, the price agreed upon at a voluntary sale between an owner willing to sell and a purchaser willing to buy.[8] The measure of compensation is the owner's loss and not the taker's gain.[9] The fact that the land, when combined with other parcels, is worth many times the present value should not be considered by the court in fixing damages unless the land can be utilized for the purpose sought, absent public involvement.[10] However, when competing interests are vying for the land taken, unless their actions are motivated by the forthcoming condemnation, that factor must be considered by the court. In *Olson v. United States*,[11] private enterprises were competing for flowage rights to Olson's land, but such evidence was excluded on the ground that the competition was motivated by the government's contemplated condemnation. The possibility of use for private purposes must be immediate and not remote or speculative.[12] Predicted future profits from a business are considered too remote or contingent to be taken into account when fixing damages.[13]

Condemnation of a geological formation is unusual, but no special reasons appear for treating such a case differently from other cases of condemnation. There are cases where the property in question was exceptionally adapted to a particular use, but combination with other tracts was not necessary. In *Mississippi & R.R. Boom Co. v. Patterson*,[14] it was held that a property owner's islands could be valued as a log boom because of their unique adaptability and possible demand for such use. All that was required to form a boom a mile in length was to connect the islands, a relatively simple operation. Cases such as this are the exception to the general rule of valuation, the assumption being that the buyer wants to put the property to the use that the seller could make of it.[15] In the instant case, however, defend-

[5] Ill. Rev. Stat. ch. 47, § 1 (Supp. 1961).

[6] Kohl v. United States, 91 U.S. 367 (1876).

[7] Jones v. North Georgia Elec. Co., 125 Ga. 618, 54 S.E. 85 (1906).

[8] Sharpe v. United States, 191 U.S. 341 (1903); City of Chicago v. Farwell, 286 Ill. 415, 121 N.E. 795 (1918).

[9] United States v. Miller, 317 U.S. 369 (1943); City of Chicago v. Provus, 415 Ill. 618, 114 N.E.2d 793 (1953).

[10] City of New York v. Sage, 239 U.S. 57 (1915).

[11] 292 U.S. 246 (1934).

[12] Mississippi & R.R. Boom Co. v. Patterson, 98 U.S. 403 (1878).

[13] Chicago Land Clearance Comm'n v. Darrow, 12 Ill. 2d 365, 146 N.E.2d 1 (1957).

[14] 98 U.S. 403 (1878).

[15] Newton Girl Scout Council, Inc. v. Massachusetts Turnpike Authority, 335 Mass. 189, 138 N.E.2d 769 (1956), holding that the girl scout camp in question was to be valued on the basis of its use as a campsite, while the condemnor sought a strip across the land for highway purposes.

ants were not operating a gas storage field. There is no indication that, in the absence of public involvement, the defendant could sell the property to a private person for use as a gas storage field. It appears that the owners in the instant case were attempting to profit by the condemnation proceeding at the expense of the public.[16] Compensation under eminent domain is not occasion for excessive enrichment.[17]

Defendants' best argument, admittedly a tenuous one, was not brought out in the opinion. Prior to trial, the gas company, as a willing buyer, had offered the owners $45 per acre for the easement—presumably the highest market rate apart from condemnation—but this offer was not even discussed by the court. Defendants would have received $3200 more than the court's award had they accepted plaintiff's final offer. If the market value at the time of the trial for the highest and best use, disregarding public involvement, is actually the measure of compensation as is often stated by the courts, then such an inflated value should not be rejected.[18] Where the public has committed itself to a project, private speculators may hike offers to landowners and land values may rise. It seems clear that such rises in value immediately prior to the trial are motivated by public involvement, yet the market value here is clearly one apart from the condemnor's market.[19] As a result, some jurisdictions reject market value at the time of the taking as the measure of compensation and use market value at an earlier date in this kind of situation.[20]

To the extent that the company pares expenses by being able to store gas in the summer, such savings should be passed along to the public—the project having been made possible by public sanction. Of course, a fair return should be given to stimulate such an enterprise and cover company expenses, but any gains in excess of that should be returned to the public, and not given to the landowner.

The final figure of $4000 awarded by the court appears to have been a generous one. The property taken was 1600 feet below the surface of the ground, while the surface itself was left untouched. Defendants could continue farming and conducting their usual activities on the land without hindrance from the gas storage. The only possible use which could be made of the stratum, a salt-water-filled sandstone, was foreclosed to the defendants because plaintiff had already obtained the rights to the surrounding strata, such acquisition having been made solely because of public involvement. An award of nominal damages, even below the figure of $4,000, would not have been patently unjust.

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16 "Methods of Establishing 'Just Compensation' in Eminent Domain Proceedings in Illinois: A Symposium," 1957 Ill. L.F. 289.

17 Bauman v. Ross, 167 U.S. 548, 574 (1896).

18 City of New York v. Sage, *supra* note 10; City of Chicago v. Equitable Life Assur. Soc'y, 8 Ill. 2d 341, 134 N.E.2d 296 (1956).

19 1 Orgel, Valuation Under Eminent Domain § 83 (2d ed. 1953).

20 Benton v. Brookline, 151 Mass. 250, 23 N.E. 846 (1890).